SUPREME COURT, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1996

VERA ARMSTRONG CHERRY,

Petitioner,

vs.

ROCKING HORSE RIDGE ESTATES INC., ET AL.,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether a Declaration of a Material Witness, Natalie Schreier, lacking a Telephone Number and an Address, submitted in a Motion to the District Court, by the Attorneys for two of the Defendants, just three weeks before Summary Judgment, satisfies the Requirements of Federal Rules of Evidence; ARTICLE VIII – HEARSAY; Rule 803(24) and Rule 804(b)(5) & ARTICLE IX – AUTHENTICATION; Rule 901(b)(6) and the Sixth Amendment? Federal Rules of Evidence stipulate that the Address of the Declarant is required so that the Attorneys for the other parties may have some chance to timely confront the Declarant and ascertain the full facts and circumstance in the interests of Justice and the Notion of Fair Play.

Whether the Deposition of the County's most knowledgeable person, County Physician, Dr. Jose Flores Lopez, conducted in full accordance with all Federal and State Rules of Evidence and in Full accordance with Federal Rules of Civil Procedure, who testified with the advice of Attorneys for the County on County policies, guidelines, treatment protocols, medication, restraints and treatment constitute "proffered evidence" necessary to satisfy County Liability for purposes of Section 1983. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690-94 (1978)? Federal Rules of Civil Procedure provide for discovery thru the use of Deposition Testimony. When such deposition is conducted of the County's most knowledgeable person, represented by Attorneys and Counsel for the County it is "proffered

QUESTIONS PRESENTED FOR REVIEW – Continued

evidence" for purposes of Monell and it can establish and confirm existing County Policy and Practices.

Whether the Involuntary Medication of a citizen, who is under detention by the COUNTY, with the anti-psychotic Drug Haldol, while in five points restraints, given for the specific purpose to reconstitute the mind, constitute Torture and does this violate: THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT and other International Laws?

Whether the Fourth and Fourteenth Amendments, afford better protection for the incarcerated in Penal Institutions against involuntary Medication of anti-psychotic brain altering Drugs, like Haldol, by Prison Authorities than they provide for civilians detained under State 5150 Statutes for evaluation. *Washington v. Harper,* 494 U.S. 599 (1990) established that a convicted or detained person may not be medicated with brain altering drugs, like Haldol, involuntarily. No such safeguards exist, however, for millions of the civilian American Population who are injected routinely with Haldol, a brain altering drug, as part of the Admission Process for Evaluation. This drug, Haldol, is specifically addressed in Harper. A writ can prevent an incarcerated person from being injected or treated, involuntarily, with brain altering drug.

LIST OF ALL PARTIES TO THE PROCEEDINGS

VERA ARMSTRONG CHERRY

PLAINTIFF-PETITIONER

v.

ROCKING HORSE RIDGE ESTATES ASSOCIATION,
COUNTY OF ORANGE,
KAY CANTRELL, CAROLE LIPINSKI,
UNITED WESTERN MEDICAL CENTER,
ROYALE THERAPEUTIC RESIDENTIAL CENTER,
FIORE, NORDBERG, WALKER & WOOLF-WILLIS,
CINDY SCHALDENBRAND, CARLA MOORE,
AVIVA GOELMAN, STEVE KEISER &
R. JOE JENKINS

DEFENDANTS-RESPONDENTS.

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OPINIONS DELIVERED IN THE CASE

Memorandum UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT No. 94-56629, Motion to amend/vacate Summary Judgment etc., Defendants motions for Summary Judgment, Defendants motions to dismiss UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, Case No. SACV – 93-00976-LMH(EE).

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The Memorandum disposing of the Appeal, U. S. Court of Appeal for the Ninth Circuit, Docket No. 94-56629 was submitted June 11, 1996 and was filed June 14, 1996 by the Clerk of Court of Appeals. See Appendix A1.

Rule 13.1., Supreme Court of the United States permits Review on a Writ of Certiorari to review a judgment in any case, civil or criminal, entered by a United States Court of Appeal if timely filed within 90 days after the entry of judgment.

The Ninth Circuit Court of Appeals for the Ninth Circuit exercised Jurisdiction under 28 U.S.C. Section 1291 and Federal Rules of Appellate Procedure 3(a), (d) & (e) and Rule 4(a). Every Attorney of Record for each Defendant experienced problems understanding the "intelligibility" of Federal Rules of Civil Procedure – Rule 59(b), (e), Motion to Amend/Vacate a Judgment, Rule 54(b) Appeals as of Right, when taken and Rule 6(a) Computation of Time – intermediate Weekends and Legal

Holidays and Computation of Time after a Rule 59 Motion.

Jurisdiction was established in the United States District Court under Federal Rules of Civil Procedure 1331, 1332(a) and 1343(a)(3).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, AND REGULATIONS

United States Constitution in Appendix E18. The Law of Treaties in Appendix F21. International Bill of Rights in Appendix G26; International Covenant on Civil and Political Rights in Appendix H29; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Appendix I30; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in Appendix J34; American Convention on Human Rights in Appendix K37; The Nuremberg Charter in Appendix L43. Federal Rules of Evidence in Appendix M45.

STATEMENT OF THE CASE

On or about November 19th 1992, Plaintiff-Petitioner, Vera Armstrong Cherry, was removed from the bedroom of her home and was placed under 72 hour detention pursuant to State Statute 5150. At no time did anyone confront the plaintiff or asked about the state of her health, her financial condition or whether she had made any suicidal statements in any telephone conversations to Natalie Schreier or to anyone else.

Plaintiff was transported by Ambulance, at 11:00 a.m. to Western Medical Treatment Centers and was subsequently transferred, in five points restraints to Orange County Mental Health. Upon arrival at Orange County Mental Health, the plaintiff was advised of the side effects of the anti-psychotic drug Haldol and was offered the Medication. The Plaintiff refused this Medication.

Dr. Jose Flores-Lopez declared an Emergency and consistent with the County Customs, Practice and Standard Operating Procedure injected the Plaintiff with 5 mg of Haldol, an anti-psychotic drug. This drug is administered involuntarily by the County, specifically, to reconstitute the mind of the patient.

The Plaintiff was then transferred to Royale Therapeutic Residential Centers on November 19th, 1992 at about 5:00 p.m. Two days later, on November 21st, 1992 Plaintiff was involuntarily medicated with the Anti-psychotic Drug Haldol, 5 mg, for Agitation. The Records show that at Orange County Mental Health as well as Royale T.R.C. the Plaintiff refused all Medication.

In October 1993, Plaintiff brought suit in the United States District Court, to redress her Involuntary Medication with Anti-psychotic Drugs, Haldol, contrary to the Fourth & Fourteenth Amendments and International Laws and Treaties.

On May 23rd, 1994 Dr. Jose Flores-Lopez, at his deposition, was examined and testified as to the treatment of the Plaintiff by Orange County Mental Health.

On or about July 29th, 1994, 1:30 p.m. in Courtroom "3" Kenneth C. Jones, Attorney of the firm of Hollins,

Schechter & Feinstein, Attorneys for Defendant Kay Cantrell filed a Personal Declaration in the District Court in which he referred to and attached a Draft Unsigned Declaration of one Natalie Schreier.

On or about July 31st, 1994 Attorneys for Royale T.R.C. Bonne, Bridges, Mueller, O'Keefe & Nichols filed a Motion for summary judgment which included a Declaration signed by Natalie Schreier. There was also a declaration signed by Brenda Tibbets, an employee of Royale T.R.C. with the District Court.

On August 26th, 1994, the District Court granted all Defendants Motions for Summary Judgment. The Court relied in part on the Declaration of Natalie Schreier to establish Probable Cause for the Detention of the Plaintiff in November 19th, 1992. See Appendix B10 [*].

The Court dismissed all defendants and ruled that probable cause was established when Plaintiff did not dispute the allegations in the Schreier Declaration on November 19th, 1992.

The Plaintiff appealed to the United States Court of Appeals for the Ninth Circuit and this Court essentially ruled on June 11th, 1996 that Summary Judgment for all parties was appropriate and Affirmed.

The Plaintiff petitions this Court to review and remand this case to the District Court in view of the violations of Federal Rules of Evidence, the Sixth, Fourth and Fourteenth Amendment.

REASONS FOR GRANTING THE WRIT

ARGUMENT I

Whether a Declaration of a Material Witness, Natalie Schreier, lacking a Telephone Number and an Address, submitted in a Motion to the District Court, by the Attorneys for two of the Defendants, just three weeks before Summary Judgment, satisfies the Requirements of Federal Rules of Evidence; ARTICLE VIII – HEARSAY; Rule 803(24) and Rule 804(b)(5) & ARTICLE IX – AUTHENTICATION; Rule 901(b)(6) and the Sixth Amendment? Federal Rules of Evidence stipulate that the Address of the Declarant is required so that the Attorneys for the other parties may have some chance to timely confront the Declarant and ascertain the full facts and circumstance in the interests of Justice and the Notion of Fair Play.

The Ninth Circuit Court of Appeals permitted a major departure from the accepted and usual course of accepting Hearsay Evidence – the Declaration of Natalie Schreier of July 30th or 31st 1994 – in Judicial Proceedings.

This draft declaration of Natalie Schreier, unsigned as of July 29th 1994, surfaced for the first time in a Motion in support of Defendant, Kay Cantrell. See Appendix P62, Unsigned Declaration of Natalie Schreier. This motion was signed on July 29th 1994, by the Attorneys of Record, Kenneth C. Jones of the firm of Hollins, Schechter & Feinstein and was lodged in the District Court. See Appendix Q65, Declaration of Kenneth C. Jones, Attorney for Defendant Kay Cantrell.

Attorney Jones describes Schreier as a material witness. Nowhere in the proffer of Defendant, Royale T.R.C.

are any telephone records of Declarant Schreier authenticating that any telephone call to the telephone numbers of the Plaintiff's.

This is in violation of Federal Rules of Evidence, Article IX – Authentication and Identification, Rule 901(b),

> (b) Illustration. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule.
>
> (6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if in the case of a person, circumstances, including self-identification, show the person answering to be the one called. See Appendix M52.

The Appellate Court countenanced a further violation of Federal Rules of Evidence, Rule 804. Hearsay Exceptions; Declarant Unavailable (b)(5), as well as Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial (24). See Appendix M48.

Both of these Rules stipulate that the address of the Declarant, Natalie Schreier is required on her declaration. They also provide for adequate notification to the adverse party, in the interests of Justice and Fair Play.

> However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the

statement and the particulars of it, including the name and address of the declarant.

No Declaration proferred to the Court by the Attorneys for Defendants, Kay Cantrell and Royale T.R.C. included an address or telephone number of Natalie Schreier, a fatal flaw.

This simple proposition for fairness and evenness of dealing is also echoed in the American Bar Association, Rules of Professional Conduct, Appendix N53.

ABA RULE 3.4. A LAWYER SHALL NOT:

(a) UNLAWFULLY OBSTRUCT ANOTHER PARTY'S ACCESS TO EVIDENCE OR UNLAWFULLY ALTER, DESTROY OR CONCEAL A DOCUMENT OR OTHER MATERIAL HAVING POTENTIAL EVIDENTIARY VALUE. A LAWYER SHALL NOT COUNSEL OR ASSIST ANOTHER PERSON TO DO ANY SUCH ACT.

This rule is:

The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in the discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defence. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant

material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offence to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offence. Paragraph (a) applies to evidentiary material generally, including computerized information.

The Attorney for Defendant Royale T.R.C., Alison Vitacolonna, of the Law Firm of Bonne, Bridges, Mueller, O'Keefe & Nichols proferred the Declaration of Natalie Schreier. This Attorney also proferred a Declaration of one Brenda Tibbets, Program Director Royale T.R.C. Paragraph. . . . E, Declaration of Dr. Curtis D. Booraem, shows that this procured Declaration of Brenda Tibbetts is false.

The Declaration of Natalie Schreier was unsigned when filed in the Motion of Kay Cantrell on the 29th July, 1994. The Declaration was subsequently signed on the 30th or 31st July, 1994 and filed in the Motion of Royale T.R.C. Judgment was handed down by the District Court on 08 26 1994. This Declaration was the critical ingredient of the motion of both Defendants Kay Cantrell and Royale T.R.C. It was also crucial to the success of these Defendants.

Petitioner urges this Court to reverse on the Grounds of Plain Error by the District Court and a total lack of Supervision by the Appellate Court. Both Courts displayed a cavalier appreciation of the adversarial process in American Jurisprudence. The Right of the adverse party to Confront a Material Witness and to cross examine are Constitutional Rights, as are the Rights to Due Process.

Sufficient Notice of this Declaration was not provided to the Adverse Party by the Attorneys for Defendants Kay Cantrell and Royale T.R.C. These Attorneys, Kenneth C. Jones and Alison Vitacolonna, were in possession of the drafts of this declaration several days before the final draft was signed by Natalie Schreier.

The Attorney, Kenneth C. Jones, Member of the American Bar Association, refers to this witness as a Material Witness with personal knowledge of the facts and events of November 19, 1992. See Appendix P62 and Q65. See also Appendix N53, Rule 3.4[a][b], ABA Rules of Professional Conduct.

CONCLUSION

The Ruling by the District Court is PLAIN ERROR as Appendix C10 (v) has the Plaintiff needing to deny the contents of a Declaration in November 19th, 1992, even though the Declaration was not fully drafted as at July 29th, 1994, a full 21 months later. The District Court erred.

The declaration of Schreier states in Appendix P61, Paragraph 32, states that at no time was the Plaintiff, Cherry physically restrained in any way.The actual objective truth is that the Plaintiff was in five points restraints at Western Medical and that the Plaintiff suffered permanent injuries as a result. See Pollitt, The Right of Confrontation: Its History and Modern Dress, 8 J.Pub.L. 381, 388-389 (1959); *Salinger v. United States*, 272 U.S. 542, 548, 47 S.Ct. 173, 175, 71 L.Ed. 398 (1926).

The right of confrontation did not originate with the provision in the Sixth Amendment, but was a common

law right. *California v. Green*, 399 U.S. 149, 155-156 (1970); *Dutton v. Evans*, 400 U.S. 74, 86 (1970) (plurality opinion); *United States v. Inadi*, 475 U.S. 387, 393, n.5 (1986); Morgan, Hearsay Dangers and the Application of the Hearsay Concept, 62 Harv.L.Rev. 177 (1948); Selected Writings on Evidence and Trial 764, 765 (Fryer ed. 1957); Michael and Adler, Real Proof, 5 Vand.L.Rev. 344, 362 (1952); Morgan, Basic Problems of Evidence 378 (1962); 7 Wigmore #2129, p. 564.

The Interests of Justice simply dictate that any statements be presented to opposing parties in a timely manner. All statements must contain an address so that the "material witness" may be contacted and examined. This is particularly important as friendly counsel are exchanging and enhancing Drafts of the Declarations.

ARGUMENT II

Whether the Deposition of the County's most knowledgeable person, County Physician, Dr. Jose Flores Lopez, conducted in full accordance with all federal and State Rules of Evidence and in Full accordance with Federal Rules of Civil Procedure, who testified with the advice of Attorneys for the County on County policies, guidelines, treatment protocols, medication, restraints and treatment constitute "proferred evidence" necessary to satisfy County Liability for purposes of Section 1983. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690-94 (1978)? Federal Rules of Civil Procedure provide for discovery thru the use of Deposition Testimony. When such deposition is conducted of the County's most knowledgeable person, represented by

Attorneys and Counsel for the County it is "proferred evidence" for purposes of Monell and it can establish and confirm existing County Policy and Practices.

The Deposition of the designees of the County of Orange was scheduled for May 23rd, 1994. Pursuant to F.R.C.P. 30(b)(6) of persons who consent to testify on its behalf of the defendant COUNTY OF ORANGE and who are most knowledgeable as to the following matters:

> 8. Any policies, guidelines, or treatment protocols as relate to how persons facing involuntary commitment under 5150 et seq., on or about November 19, 1992, were to be treated, medicated, restrained or otherwise dealt with during their involuntary commitments;

Dr. Jose Flores-Lopez attended such deposition and was duly sworn. Mr. Watkins of the Law Firm Lunberg & Watkins, the Attorneys of record for the defendant, COUNTY OF ORANGE, assisted Dr. Jose Flores-Lopez, at all times.

The Deposition was conducted in full accordance with all State and federal Laws –

- F.R.C.P. Rule 26; Deposition and Discovery,
- Rule 28; Persons Before Whom Depositions Man [sic] be Taken,
- Rule 30; Deposition Upon Oral Examination.

Dr. Jose Flores-Lopez testified on the following pages of his deposition that all his actions were in accordance with standard county procedure

Page 44 – Involuntary Injections with a needle,

Page 51 – Involuntary use of Restraints,

Page 44 – Involuntary use of the standard Medication, Haldol,

Page 45 – Nonconsensual administration of the Medication, Haldol,

Page 43, 46 – Definition of Emergency by County,

Page 27, 28 – Administration of Haldol to reconstitute the mind.

Page 25 – Use of County Standard forms and emergency involuntary medication.

Page 52 – County forms and policy re Involuntary Medication.

In Appendix A4 the District Court Ruled that Plaintiff did not introduce sufficient evidence to sustain a Monell claim against summary judgment.

In Appendix A4, Paragraphs 1 and 2, the U.S. Court of Appeals for the Ninth Circuit ruled that Plaintiff failed to introduce any evidence that the treatment decisions were made pursuant to County policy, practices or custom. See *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690-94 (1978).

Civil Rights Act of 1866 is among the Acts of Congress to safeguard the rights of individuals. As are

42 U.S.C. 1981; equal rights under the law,

42 U.S.C. 1982; Property Rights of Citizens,

18 U.S.C. 242; Deprivation of rights under color of law,

18 U.S.C. 241; Conspiracy against rights of citizens,

42 U.S.C. 1985; Conspiracy to interfere with civil rights.

In *United States v. Stanley,* 483 U.S. 669 (1987) Congress intervened after an Army Sargeant was clandestinely, involuntarily, medicated with LSD by Military, Medical and CIA personnel. The Court had ruled, unanimously, that the Military is immune from litigation from a subordinate, citing military discipline. Congress, however, reasoned that a soldier does not surrender his Civil Rights when he enlists to defend his Country. A Tribunal in Florida, in May 1996, awarded Sgt. Stanley in excess of $300,000 for his Damages.

We then come to 42 U.S.C. 1983 which allows "Civil action for deprivation of Rights:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action of law, or other proper proceedings for redress."

Many decisions have clearly defined State Action, Custom or Usage and Private persons etc., *United States v. Price,* 383 U.S. 787, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966); *United States v. Rabinowich,* 238 U.S. 78, 87, 35 S.Ct. 682, 684, L.Ed. 1211 (1915); *Screws v. United States,* 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. (1945).

> "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of state law. [It] is clear that under 'color' of law means 'pretense of law'. Thus acts of officers in the ambit of their

> personal pursuits are plainly excluded. Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it."

This Court has previously granted review, under its Certiorari jurisdiction, of dismissals for failure to state a claim. See *Estelle v. Gamble*, 429 U.S. 97 (1976); *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 272 (1976); *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971); *Jones v. Alfred Mayer Co.*, 392 U.S. 409 (1968).

CONCLUSION

We urge the Court to grant review of the proposition that a deposition taken in full accordance with all Federal and State Laws, where the deponent was ably represented by most competent and able COUNTY ATTORNEYS who testifies to County, Custom, Practice, Usage and Procedure satisfies the requirements for Monell.

ARGUMENT III

Whether the Involuntary Medication of a citizen, who is under detention by the COUNTY, with the anti-psychotic Drug Haldol, while in five points restraints, given for the specific purpose to reconstitute the mind, constitute Torture and does this violate: THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT and other International Laws?

Appendix I30 defines TORTURE.

PART 1

Article 1.

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Article 4.

1. Each State Party shall ensure that all acts of torture are offenses under its criminal law. The same shall apply to an attempt to commit torture and to any act by any person which constitutes complicity or participation in torture.

The involuntary injection or medication of a Brain Altering Drug by a COUNTY EMPLOYEE while acting in an official capacity is torture. It is the more so, if it is done with the specific motivation of having the victim comply with COUNTY rules and to supply information.

In *Filartiga v. Pena-Irala,* 630 F.2d 876 (2d Cir. 1980) asserted Federal Jurisdiction when the alleged torture occurred in another country. The Court found that the

First Congress established original District Jurisdiction in the Judiciary Act of 1789, codified as 28 U.S.C. Section 1350. Construing this rarely-invoked provision, the Court held that deliberate torture perpetuated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties.

The Court found no distinction between treatment of aliens and citizens.

The case was remanded. The U.S. judicial opinion thus provides as follows:

> The record of this case shows that torture and death are bound to recur unless deterred. This Court concludes that an award of punitive damages of no less than $5,000,000 to each plaintiff is appropriate to reflect adherence to the world community proscription of torture and to attempt to deter its practice.

Filartega v. Pena, 557 F.Supp. 860, 867 (E.D.N.Y.1984).

It may be claimed that the United States has ratified one Treaty but not another. There are International Treaties and there are Regional Treaties like African or American. The common focus is that Nations or States may not use their authority to divest citizens, aliens or tourists of their basic human rights that guarantee integrity of the person and the mind. Involuntary Medication of anti-psychotic drugs as practiced and sanctioned throughout the United States is something no real American can be proud of.

Each and every Treaty anticipates an Independent Judiciary whereby an aggrieved person may seek redress

in Court and be compensated for violations of his Civil Rights:

> Appendix G27, Articles 5, 7 and 8; International Bill of Rights, Appendix I32, Article 14; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Appendix J36 (5) (5.10); Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Appendix K38 and 41, Article 7.6, Article 25.1; American Convention on Human Rights and The Nuremburg Charter, Appendix L44, Article 6(c) crimes against humanity.

The U.S. reversed the United States Court of Appeals for the Eighth Circuit in *City of St. Louis v. Proprotnik*, 485 U.S. 772 (1988). Justice Brennan wrote separately, however, because he believed that the commendable desire of today's plurality has led it to embrace a theory of municipal liability that is both unduly narrow and unrealistic, and one that ultimately would permit municipalities to insulate themselves from liability for the acts of all but a small minority of actual policy makers.

The author of the opinion in *Proprotnik* also labored and authored the dissent in *Zinermon et al. v. Burch*, 494 U.S. 1965 (1990).

West v. Atkins, 487 U.S. 5096 (1988), held that a Physician who is under contract to inmates at a state-prison hospital on a part-time basis acts "under color of state law," within the meaning of Section 1983, when he treats an inmate. Pp. 48-57.

The Court relied on *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 935-937; *Polk County v. Dodson*, 454 U.S. 312, distinguished. Pp. 49-50 and *Spicer v. Williamson*, 191 N.C.

487, 490, 132 S.E. 291, 293 and *Youngberg v. Romeo*, 457 U.S. 307, 322-323 (1982).

City of Canton, Ohio v. Harris et al., 489 U.S. 1088 (1989).

The Ninth Circuit ruled, in the case of Dr. Humberto Alvarez Machain and the 1985 slaying of U.S. Drug Agent Camarena, that "pretrial detainees have a clearly established right to be free from punishment."

The Court ruled that "the Torture Victims Protection Act does not impose new duties or liabilities on defendants. Torture has long been condemned and prohibited by international law, citing a 1980 case on the issue. They also stressed that "aliens have had the right to adjudicate torture claims in our federal courts since the passage of the Alien Tort Claim Act in 1789."

ARGUMENT IV

Whether the Fourth and Fourteenth Amendments afford better protection for the incarcerated in Penal Institutions against involuntary Medication of anti-psychotic brain altering Drugs, like Haldol, by Prison Authorities than they provide for civilians detained under State 5150 Statutes for evaluation. *Washington v. Harper*, 494 U.S. 599 (1990) established that a convicted or detained person may not be medicated with brain altering drugs, like Haldol, involuntarily. No such safeguards exist, however, for millions of the civilian American Population who are injected routinely with Haldol, a brain altering drug, as part of the Admission Process for Evaluation. This drug, Haldol, is specifically addressed in *Harper*. A writ can

prevent an incarcerated person from being injected or treated, involuntarily, with brain altering drugs.

Do the convicted incarcerated criminally insane enjoy better protection under the Fourth and Fourteenth Amendments against Involuntary anti-psychotic medication than civilians and citizens randomly detained under State 5150 Statutes?

The literature refers to anyone detained under 5150 Statutes as mentally insane. Ears closer to the ground find, however, that these statutes are liberal and are often abused. These State Statutes have been used by inlaws, ex-spouses, in custody battles, in management struggles, in the dismissed employee, whistleblowers and potential heirs who are in a hurry to succeed, and others for economic purposes.

Upon arrival at COUNTY of Orange, California, any such detainee is placed in five point restraints and is offered voluntarily the anti-psychotic drug Haldol. If the detainee declines the drug voluntarily, COUNTY Policy is that the drug be administered involuntarily.

Royale T.R.C.administers the same anti-psychotic drug Haldol, involuntarily if a patient is agitated. Royale T.R.C. considers this involuntary medication so routine that they do not even keep any records of administration of these drugs.

The actions of COUNTY of Orange and Royale T.R.C. would be illegal in a Penal Setting, even if the Inmate had been properly convicted of Mass Murder, and had pleaded "INSANITY".

A criminally convicted inmate has Rights. If he objects to the Administration of anti-psychotic medication:

a. The Inmate is entitled to a hearing,

b. The Committee who determines that the Inmate should be medicated can not include treating or diagnosing physicians and personnel,

c. The Inmate has certain procedural rights before, during and after the hearing,

d. The Inmate must be given 24 hours notice of a proposed hearing, a notice of tentative diagnosis for treatment and medication,

e. The Inmate may present witnesses, cross examine staff and have the advice of a competent lay advisor,

f. Minutes of the hearing must be kept and the Inmate must be provided with a copy,

g. The Inmate has the right to appeal to the Superintendent of the Center within 24 hours, and the Superintendent must decide the appeal within 24 hours after its receipt,

h. The Inmate may seek judicial review of a committee's decision in State Court by means of a personal restraint petition or extraordinary writ.

The above criteria were annunciated in *Washington v. Harper,* 494 U.S. 599 (1990). The Court relied on *Vitek v. Jones,* 445 U.S. 480 (1980). A series of cases established these principles.

If an Inmate prevailed in the State Court on a Writ he could not be medicated involuntarily with anti-psychotic drugs like Haldol.

The Plaintiff prevailed on a Writ of Habeas Corpus in the State Court. See Appendix O56, Writ of Habeas Corpus Granted on November 24th, 1992. By this time the Plaintiff was involuntarily injected by COUNTY on November 19th, 1992 as part of the admission procedure. The Plaintiff was also involuntarily medicated on November 21st, 1992 by Royale T.R.C., for agitation. Royale T.R.C. makes it a condition for petitioners going to Court to be medicated hours before their hearing.

The dissent in *Harper*, Justice Stevens, felt that the safeguards in *Harper* fell short of the Constitution and very definitely fell short of the Helsinki Accord with no guarantees of compliance in a Penal Setting.

Millions of American Citizens and Veterans do not enjoy the procedural safeguards enunciated in *Harper*. Any Fascist, cloaked with authority, can involuntarily inject a detainee with brain altering, anti-psychotic drugs like Haldo, with impunity.

CONCLUSION

The above referenced cases empower this Court to find that this Writ of Certiorari directly addressed the critical question here – the Section actionability of a COUNTY'S involuntary injection and medication of a person detained by the COUNTY of dangerous brain altering anti-psychotic drug HALDOL.

If a violation of a person's civil rights occurs within the borders of a State Party the victim has the right to pursue litigation in a competent Court.

International Law has been accepted for centuries as part of the American Common Law, including the law of Torture.

We urge the American Court of last resort to declare involuntary medication of permanent brain altering drugs TORTURE. We also urge the Court to find that Protection from officials altering the bloodstream, brain and decision making processes is A Fundamental Right, guaranteed by the Bill of Rights and the Constitution.

Respectfully submitted,

VERA ARMSTRONG CHERRY
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Tel: (714) 289-1293
Petitioner in Pro Se

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VERA ARMSTRONG CHERRY, Plaintiff-Appellant, v. ROCKING HORSE RIDGE ESTATES ASSOCIATION; R. JOE JENKINS; CARLA MOORE; CINDY SCHALDENBRAND; AVIVA GOELMAN; KAY CANTRELL; STEVE KEISER; COUNTY OF ORANGE; ROYAL TRC, d/b/a ROYAL HEALTH CARE CENTER; UNITED WESTERN MEDICAL CENTER; CAROLE LIPINSKI; CHERI BLANCHARD; FIORE, NORDBERG, WALKER & WOOLF-WILLIS, Defendants-Appellees.	)	No. 94-56629 D.C. No. CV-93-00976-LHM(EE)
VERA ARMSTRONG CHERRY, Plaintiff-Appellee, v. KAY CANTRELL; FIORE, NORDBERG, WALKER & WOOLF-WILLIS, Defendants-Appellants,	)	

and ROCKING HORSE RIDGE ESTATES; R. JOE JENKINS; CARLA MOORE; CINDY SCHALDENBRAND; AVIVA GOELMAN; STEVE KEISER; COUNTY OF ORANGE; ROYAL TRC, d/b/a ROYAL HEALTH CARE CENTER; UNITED WESTERN MEDICAL CENTER; CAROLE LIPINSKI; CHERI BLANCHARD, Defendants.	No. 94-56716 D.C. No. CV-93-00976-LHM MEMORANDUM* (Filed Jun. 14, 1996)

Appeal from the United States District Court
for the Central District of California
Linda H. McLaughlin, District Judge, Presiding

Submitted June 11, 1996**

Before: CANBY, NOONAN, and LEAVY, Circuit Judges.

Vera Armstrong Cherry appeals pro se the district court's judgment in favor of the County of Orange and other defendants in Cherry's 42 U.S.C. § 1983 action regarding her involuntary civil commitment for psychiatric evaluation under Cal. Welf. & Inst. Code § 5150. Certain defendants cross-appeal the district court's denial

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*This disposition is not apropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a); 9th Cir. R. 34-4. Accordingly, the request of cross-appellant Cantrell for oral argument is denied.

of their motion for attorneys' fees. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.[1]

Our de novo review of the entire record reveals that the district court properly granted summary judgment on Cherry's 1983 claims against defendants Carole Lipinski, Kay Cantrell, and the law firm of Fiore, Nordberg, Walker & Wolf-Willis, because there was no evidence to support Cherry's allegation that these private parties were involved in a conspiracy with the County of Orange to violate Cherry's constitutional right to liberty and privacy. *See Howerton v. Gabica*, 708 F.2d 380, 382-83 (9th Cir. 1983) (action by private individuals is not action under color of state law as required under § 1983 where there is no "significant" state involvement in the action).

The district court properly dismissed with prejudice defendant Rocking Horse Ridge Estates Association and the five individual Association members because it appeared beyond doubt that Cherry could prove no set of facts to support her claim that these defendants violated

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[1] Defendants' argument that Cherry's notice of appeal was untimely because her motion for a new trial was late is without merit. Judgment was entered on August 30, 1994. Cherry's Rule 59 motion for a new trial, filed on September 13, 1994, was timely because it was filed within 10 days of entry of judgment, excluding weekends as provided by Fed. R. Civ. P. 6(a). Also without merit is the argument that Cherry should have filed a notice of appeal from the district court's March 15, 1994 order dismissing certain defendants with prejudice. Because this order did not determine all of the claims or rights and liabilities of all parties, it was not a final order from which an appeal could be taken. *See* Fed. R. Civ. P. 54(b); *Chacon v. Babcock*, 640 F.2d 221, 222 (9th Cir. 1981).

her constitutional rights. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

The district court also properly granted summary judgment on Cherry's 1983 claim against the County of Orange because the undisputed evidence demonstrated that probable cause existed to detain Cherry for an emergency 72-hour psychiatric hold. *See Maag v. Wessler*, 960 F.2d 773, 775-76 (9th Cir. 1991); *People v. Triplett*, 192 Cal.Rptr. 537, 540-41 (1983) (to constitute probable cause to detain a person under § 5150 of the Welf. & Inst. Code, "a state of facts must be known to the [authorized person] that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled"). In any event, even if there was a disputed issue of fact regarding the constitutionality of the treatment decisions made by county officials, summary judgment was properly granted because Cherry failed to introduce evidence that the treatment decisions were made pursuant to county policy, practice or custom. *See Monell v. New York City Department of Social Services*, 436 U.S. 658, 690-94 (1978).

Summary judgment was properly granted on Cherry's claims against United Western Medical Centers and Royale TRC (two private facilities that treated Cherry) because, even assuming that their treatment of Cherry constituted conduct under color of state law for purposes of § 1983, Cherry failed to proffer any evidence that the allegedly unconstitutional treatment was performed according to policies, customs or practices of the county. *See id.*

The district court's denial of defendants' motion for attorneys' fees is affirmed for the reasons set forth in the district court's October 18, 1994 order.

Cherry's request for sanctions made in her opening brief is denied.

Defendant Royal TRC's request for sanctions is denied.

Cherry's motion to refile her reply brief to cite supplemental authorities is denied. *See* Fed. R. App. P. 28(j).

The motion of defendant Jenkins for enlargement of time to file joinder in co-appellees' answering brief is granted.

AFFIRMED.

APPENDIX B

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV93-976LHM( ) Date 10/12/94

Title CHERRY V. COUNTY OF ORANGE ET AL.

DOCKET ENTRY

PRESENT:

HON. LINDA H. McLAUGHLIN, JUDGE

SHERYL RITCHEY	None Present
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS: PLAINTIFF'S MOTION TO AMEND/ VACATE SUMMARY JUDGMENT ETC.

IN CHAMBERS:

The Court, on its own motion, hereby VACATES the Plaintiff(s)/~~Defendant(s)~~ hearing on 10/21/94. F.R.Civ.P. 78; Local Rule 7.11. Based on the papers submitted by the parties and applicable law, the Court now rules as follows:

(1) Although plaintiff's motion re amending/ modifying summary judgment/judgment on the

pleadings was untimely filed, the Court nevertheless read and considered the moving and all opposition papers. The Court is thoroughly familiar with the voluminous file in this case.

(2) RULING: Plaintiff's motion is DENIED.

(3) The Court adopts the facts, law and arguments set forth by defendants in their opposition papers in support of the ruling.

(4) None of the defendants has satisfied the stringent *Christiansburg* standard in order to be entitled to recovery of attorney's fees in this Section 1983 litigation. As reflected in the extensive rulings, the Court expended many hours in researching and analyzing the numerous and complex issues which were raised by plaintiff. The motions to dismiss brought by defendants were denied as to enumerated causes of action. Although the Court ultimately granted summary judgment in favor of defendants, again it was necessary for the Court to expend many hours in researching and analyzing numerous and complex issues. Accordingly, the Court cannot conclude that plaintiff's suit was meritless, groundless and without foundation.

(5) RULING: MOTIONS DENIED.

APPENDIX C

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV93-976LHM( ) Date 8/26/94

Title CHERRY V. COUNTY OF ORANGE ET AL.

DOCKET ENTRY

PRESENT:

HON. LINDA H. McLAUGHLIN, JUDGE

SHERYL RITCHEY	None Present
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS: (1) DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT
(2) PLAINTIFF'S MOTION TO FILE 5TH AMENDED COMPLAINT

IN CHAMBERS:

The Court, on its own motion, hereby VACATES the Plaintiff(s)/Defendant(s) hearing on 8/29/94. F.R.Civ.P. 78; Local Rule 7.11. Based on the papers submitted by the

parties and applicable law, the Court now rules as follows:

(1) The Court has read and considered all moving, opposition, and reply papers on the Motions for Summary Judgment, as well as all Declarations and Exhibits thereto and deposition testimony submitted as evidence. The Court has also read and considered all papers and exhibits submitted on the Motion for Leave to File a Fifth Amended Complaint and the Motion to Dismiss that Complaint.

(2) Rulings: All Defendants' Motions for Summary Judgment are granted. Plaintiff's Motion for Leave to File a Fifth Amended Complaint is denied. Defendant United Western Medical Center's Motion to Dismiss Fifth Amended Complaint is denied as moot.

(3) Evidentiary rulings: The Court overrules all objections made by Cantrell to evidence proffered, except for the portions of the Booraem Declaration which are conclusions of law, which are sustained.

(4) In order to establish uncontroverted facts for the purpose of ruling on Defendants' Motions for Summary Judgment, the Court has resolved all actual conflicts in the evidence in favor of Plaintiff as the nonmoving party and drawn all reasonable inferences from the evidence in favor of Plaintiff as the nonmoving party.

(5) The Court makes the following findings of undisputed material fact and conclusions of law:

(i) Defendant County may be sued under 42 U.S.C. § 1983 as a public entity. No other

defendant is a public entity, employee, or quasi-public entity, so all Defendants other than Defendant County must be shown to have acted in concert with a public entity, employee, or quasi-public entity to be potentially liable under § 1983.

(ii) There is no evidence that Defendant Fiore Nordberg acted in concert with any other Defendant to publish any information about Plaintiff. Any unilateral action here is not actionable under § 1983. The Court expresses no opinion about Plaintiff's rights under state law here.

(iii) Hopkins, a member of Defendant Fiore Nordberg, was the only representative of this Defendant to talk with any other Defendant before Plaintiff was involuntarily committed. The decision to involuntarily commit Plaintiff had already been made at that time. Defendant Fiore Nordberg therefore cannot be held responsible for the decision to commit. Defendant Fiore Nordberg cannot be liable under 42 U.S.C. § 1983.

(iv) Undisputed evidence shows that Defendant Lipinski did not participate in the decision to commit Plaintiff. Plaintiff has admitted in her deposition that this Defendant did not touch her in assistance of Blanchard in having Plaintiff committed. This statement cannot be contradicted by Plaintiff's Declaration submitted on this motion. Defendant Lipinski is therefore not a state actor and cannot be held liable under § 1983.

(v) As a matter of law, the evidence in Cantrell Decl. ¶ 6 alone establishes probable cause to detain Plaintiff under Cal. Welf. & Inst.

Code § 5150. Whether or not Schreier's statements were true, their presentation without any contrary evidence showing their falsity at the time of the commitment is sufficient to establish probable cause for the hearer to believe Plaintiff was suicidal, which is a permissible basis for commitment under § 5150. The Court expresses no opinion as to the truth or falsity of the statements contained in Schreier Decl. ¶ 6.

(vi) Since there was probable cause to detain Plaintiff, Defendant Cantrell cannot be held liable under § 1983 for any actions taking in causing the commitment to occur. Any subsequent actions by this Defendant which may have caused some harm to Plaintiff do not rise to the level of constitutional injuries.

(vii) County cannot be held liable for wrongful detention, as there was probable cause for that detention. There is no evidence that any alleged illegal search and seizure by Blanchard was based on County policy, so County cannot be held liable for this. County doesn't bear respondeat superior liability under § 1983.

(viii) As to any allegedly unconstitutional restraint applied pursuant to Dr. Flores-Lopez's order, Plaintiff has introduced no evidence that County's policy regarding the use of restraints was unconstitutional or even as to what the policy is, although it is established by Dr. Flores-Lopez's testimony that the policy exists. Plaintiff has not met the burden to sustain a *Monell* claim against summary judgment, and County therefore cannot be held liable under § 1983.

(ix) Neither Royale TRC nor United Western Medical Centers is a state actor when treating Plaintiff pursuant to a commitment. *See Harvey v. Harvey,* 949 F.2d 1127 (11th Cir. 1992). United Western Medical Centers took no other action. It therefore cannot be held liable under § 1983. Royale TRC is also responsible for the continuance of Plaintiff's commitment from 11/22 to 11/24. However, a review of the evidence shows there was probable cause as a matter of law for this extension of the commitment. Royale TRC therefore committed no violation of constitutional rights by this extension. Royale TRC therefore cannot be held liable under § 1983.

(x) As all of the existing claims are dismissed on summary judgment, Plaintiff's Proposed Fifth Amended Complaint would essentially be a new suit. The only claim in the matter that would give the federal court original jurisdiction is asserted against someone not presently a party. It is quite possible that pendent party jurisdiction over the other defendants would not be proper. Under these circumstances, the interests of justice dictate that Plaintiff not be permitted to file a Fifth Amended Complaint.

(xi) No Fifth Amended Complaint being accepted for filing, Defendant United Western Medical Centers's Motion to Dismiss is denied as moot.

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV93-976LHM( ) Date 3/1/94

Title CHERRY V. ROCKING HORSE RIDGE

DOCKET ENTRY

COURTESY COPIES OF ALL DOCUMENTS MUST BE DELIVERED OR SENT BY FACSIMILE TO CHAMBERS OF JUDGE McLAUGHLIN BY 12:00 NOON ON THE

PRESENT:

HON. LINDA H. McLAUGHLIN, JUDGE

SHERYL RITCHEY	None Present
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
None Present	None Present

PROCEEDINGS: DEFENDANTS MOTIONS TO DISMISS

IN CHAMBERS:

The Court, on its own motion, hereby VACATES the ~~Plaintiff(s)/~~Defendant(s) hearing on 3/7/94. F.R.Civ.P. 78; Local Rule 7.11. Based on the papers submitted by the parties and applicable law, the Court now rules as follows:

(1) The Court has read and considered the Motions to Dismiss filed by Defendants Rocking Horse Ridge Estates Association [sued herein as Rocking Horse Ridge Estates], Cindy Schaldenbrand, Carla Moore, Aviva Goelman, Steve Keiser, Fiore, Nordberg et al., R. Joe Jenkins, Royal TRC dba Royal Health Care Center [sued herein as Royale TRC], United Western Medical Centers [sued herein as Western Medical Center], County of Orange [sued herein as Orange County Mental Health], Kay Cantrell, and Carole Lipinski.

(2) Rulings: Defendants Rocking Horse Ridge Estates, Cindy Schaldenbrand, Carla Moore, Aviva Goelman, Steve Keiser, and R. Joe Jenkins's Motions to Dismiss are granted with prejudice. Defendant Orange County Mental Health's Motion to Dismiss is granted without prejudice. Defendants Kay Cantrell, Royale TRC, Western Medical Center, and Carole Lipinski's Motions for a More Definite Statement are granted. Defendant Fiore, Nordberg et al.'s Motion to Dismiss is granted with prejudice as to all but the claim that Defendant Fiore, Nordberg et al. was involved in the violation of Plaintiff Vera Cherry's privacy and confidentiality rights in her medical information. Defendant Fiore, Nordberg et al.'s request for sanctions is denied.

(3) As Plaintiffs allege that Plaintiffs and some, if not all, Defendants are citizens of California, subject matter jurisdiction cannot be based on diversity of citizenship but must instead be based on the existence of a federal question.

(4) The Court deems the Third Amended Complaint (filed January 7, 1994) [hereinafter TAC] as a supplemental pleading under Federal Rule of Civil Procedure Rule 15 to the document entitled [Proposed] Amendment to Complaint (Second Amended Complaint, lodged December 13, 1993) [hereinafter SAC].

(5) State immunity laws are inapplicable to claims under 42 U.S.C. § 1983.

(6) Any claim under § 1983 requires an allegation of action under color of state law. If no such allegation can be made, no claim has been stated.

(7) Plaintiff cannot state a claim under 42 U.S.C. § 1985, because the rights at issue here are protected only against government, not private, interference. *See Bray v. Women's Health Clinic*, 113 S. Ct. 753, 764.

(8) There is absolute immunity under § 1983 for witness testimony. This includes statements in declarations presented in any proceeding. *See generally Briscoe v. Lahue*, 444 U.S. 277.

(9) The allegations in paragraphs 17 through 20 and 24 through 35 of the SAC and paragraphs 9 and 10 and 17 through 23 of the TAC can support claims of violation of Plaintiffs' rights that are not barred by qualified immunity against Defendants *Lipinski, Cantrell, Western Medical Center, Royal TRC,* and *Blanchard*. However, these allegations are overly vague for

Defendants to be forced to respond to, so Plaintiffs will be required to amend the complaint to satisfy the requirements of Federal Rule of Civil Procedure 12(e).

(10) The allegations against Orange County Mental Health are insufficient to state a claim against a municipality for violation of § 1983, but these *allegations could be amended* to state a claim, although no claim for punitive damages can be made against this Defendant. Plaintiffs are therefore entitled to another opportunity to amend their complaint as it relates to this Defendant.

(11) Paragraphs 40 and 41 of the SAC and paragraphs 11 through 15 of the TAC can support state law claims against Defendants *Cantrell and Fiore, Nordberg* that might be properly decided by this Court in the exercise of pendent jurisdiction under 28 U.S.C. § 1367. However, these allegations are overly vague for these Defendants to be forced to respond to, so Plaintiffs will be required to amend the complaint to satisfy the requirements of Federal Rule of Civil Procedure 12(e). The Court has not yet determined whether the exercise of supplemental, jurisdiction will actually be appropriate in this action.

(12) Any other claims based on state law that might be raised by Plaintiffs in this action are barred by state absolute immunity statutes.

SCHEDULE AND DEADLINES

NOTICE TO PLAINTIFFS: FAILURE TO COMPLY WITH THIS SCHEDULE AND THESE DEADLINES

WILL MOSTLY LIKELY RESULT IN DISMISSAL OF THIS ACTION. IT IS IMPERATIVE THAT PLAINTIFF COMPLY IN ORDER TO AVOID DISMISSAL OF THIS ACTION FOR NON-COMPLIANCE.

– 3/15/94: Plaintiffs are ordered to file and personally serve on remaining defendants the Fourth Amended Complaint which is in strict compliance with the rulings in this Minute Order. Additionally, the Fourth Amended Complaint must not incorporate by reference any prior pleadings. The Fourth Amended Complaint must be complete and self-contained.

Plaintiffs are to file Proofs of Service by 3/18/94.

– 3/22/94: Defendants are ordered to file and serve Responsive pleading or answer. Personal service shall be made on Plaintiff. Proof of Service shall be filed by 3/25/94.

– 4/5/94: Plaintiffs are ordered to file and serve Opposition if Defendants file motion to dismiss on 3/22/94. Plaintiffs are to file Proof of Service by 4/8/94.

– 4/12/94: Defendants are ordered to file and serve Replies to Plaintiffs' Opposition.

– Sanctions: Plaintiffs' claims against Defendant Fiore, Nordberg et.al. did not violate F.R.Civ.P. 11. Accordingly, the Court declines to impose sanctions.

– **SERVICE:** The Court will serve this Minute Order on Plaintiffs by mail. In order to ensure immediate receipt of this Minute Order by Plaintiffs, the Court orders Defendant Fiore, Nordberg to effect personal service by 3/3/94 and file Proof of Service by 3/7/94.

APPENDIX E

The constitutional provisions, treaties, statutes, ordinances and regulations involved in the case

U.S. Constitution

ARTICLE I

Section 10 – No State shall enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

ARTICLE III

Section 2 – The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law

and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several states, shall be bound by oath or Affirmation, to support this Constitution: but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no

Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty or property without due process of law**; nor shall private property be taken for public use without just compensation.

AMENDMENT XIV

Section 1 – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

THE LAW OF TREATIES

(I.L. c & m, Chapter 6)

4.0 VIENNA CONVENTION ON THE LAW OF TREATIES*

PART 1. INTRODUCTION

Article 1. Scope of the present Convention

The present Convention applies to treaties between States

Article 2. Use of Terms

1. For purposes of the present Convention:

(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b)"ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;

(c) "full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by the treaty, or for accomplishing any other act with respect to a treaty;

(d) "reservation", means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State.

(e) "negotiating State" means a State which took part in the drawing up and adoption of the text of the treaty;

(f) "contracting State" means a State which has consented to be bound by the treaty, whether or not the treaty has entered into force;

(g) "party" means a State which has consented to be bound by the treaty and for which the treaty is in force;

(h) "third State" means a State not a party to the treaty;

(i) "international organization" means an intergovernmental organization.

2. The provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3. International agreements not within the scope of the present Convention.

The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such

other subjects of international law, or to international agreements not in written form, shall not affect:

(a) the legal force of such agreements;

(b) the application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

(c) the application of the Convention to the relations of States as between themselves under international agreements to which other subjects of the international law are also parties.

Article 4. Non-retroactivity of the present Convention.

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5. Treaties constituting international organization and treaties adopted within an international organization.

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

PART 111. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1. OBSERVANCE OF TREATIES

Article 26. Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27. Internal law and observance of treaties

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

SECTION 2. APPLICATION OF TREATIES

Article 28. Non-retroactivity of treaties

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29. Territorial scope of treaties

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30. Application of successive treaties relating to the same subject-matter

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of State Parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

(a) as between States Parties to both treaties the same rule applies as in paragraph 3;

(b) as between a State Party to both treaties and a State Party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State from the conclusion or application of a treaty, the provisions of which are incompatible with the obligations towards another State under another treaty.

APPENDIX G

HUMAN RIGHTS

(I.L. c & m, Chapter 8)

6.0 CHARTER OF THE UNITED NATIONS (See Document 10)

The International Bill of Rights

6.1 UNIVERSAL DECLARATION OF HUMAN RIGHTS*

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member states themselves and among the peoples of territories under their jurisdiction.

Article 1 – All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards on another in a spirit of brotherhood.

Article 2 – Everyone is entitled to all the rights and freedoms set forth in this Declaration, without discrimination of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non self-governing or under any other limitation of sovereignty.

Article 3 – Everyone has the right to life, liberty and the security of the person.

* * *

Article 5 – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

* * *

Article 7 – All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8 – Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9 – No one shall be subject to arbitrary arrest, detention or exile.

Article 10 – Everyone is entitled in full equality to a fair and public hearing by an independent tribunal, in the determination of his rights and obligations and of any criminal charge against him.

* * *

Article 12 – No one shall be subjected to arbitrary interference with his privacy, family home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right of the protection of the law against such interference and attacks.

* * *

APPENDIX H

PART 111

Article 9. 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest and detection. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

APPENDIX I

6.10 CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT*

PART 1

Article 1.

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2.

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political

instability or any public emergency, may be invoked as a justification of torture.

Article 4.

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to any act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

* * *

Article 10.

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully include in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11. Each Party State shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form

of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12. Each Party State shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13. Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14.

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15. Each State Party shall ensure that any statement which is established to have been made as a

result of a torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16.

1. Each State Party shall under take to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

APPENDIX J

6.22 DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE*

The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are the prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe. They therefore reaffirm their commitment to implement fully all provisions of the Final Act and of the other CSCE documents relating to the human dimension and undertake to build on the progress they have made.

They recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives.

In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

I

(1) The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.

(2) They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for the fullest expression.

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

(4) They confirm that they will respect each other's right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies confirm with their obligations under international law and are brought in harmony with the provisions of the Declaration on Principles and other CSCE commitments.

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.5) – the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured;

(5.7) – human rights and fundamental freedoms will be guaranteed by law in accordance with their obligations under international law;

(5.9) – all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

(5.10) – everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(5.11) – administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available.

(5.12) – the independence of the judges and the impartial operation of the public judicial service will be ensured.

APPENDIX K

6.25 AMERICAN CONVENTION ON HUMAN RIGHTS*

PART 1. STATE OBLIGATIONS AND RIGHTS PROTECTED

CHAPTER 1. GENERAL OBLIGATIONS

Article 1. Obligation to respect rights.

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reason of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, "person" means every human being.

Article 2. Domestic legal effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the State Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms.

CHAPTER 11. CIVIL AND POLITICAL RIGHTS

Article 3. Rights to juridical personality

Every person has the right to recognition as a person before the law.

Article 5. Right to humane treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

* * *

Article 7. Right to personal liberty.

1. Every person had the right to personal liberty and security.

2. No one shall be deprived of his personal liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

* * *

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release or detention and order his release if the detention is unlawful. In

States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

Article 11. Right to privacy

1. Everyone has the right to have his honor respected and his dignity recognized.

2. No one may be the object of arbitrary or abusive interference with the private life, his family, his home, or his correspondence, or the unlawful attacks on his honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12. Freedom of conscience and religion.

1. Everyone has the right to freedom of conscience and religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13. Freedom of thoughts and expression.

1. Everyone shall have the right to freedom of thought and expression. That right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of his choice.

2. The exercise of the right provided in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of the

government or private controls over the newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainment may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitement to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offences punishable by law.

Article 24. Right to equal protection

All persons are equal before the laws. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25. Right to judicial protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention,

even though such violation may have been committed by persons acting in the course of their official duties.

2. The State Parties undertake:

a. to ensure that any person claiming such remedy shall have the rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibility of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.

APPENDIX L

The Nuremburg Charter

7.2 AGREEMENT FOR THE PROSECUTION AND PUNISHMENT OF THE MAJOR WAR CRIMINALS OF THE EUROPEAN AXIS POWERS AND CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL*

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

* * *

Jurisdiction and General Principles

Article 6.

The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) crimes against peace: namely, planning, preparation, initiation or waging a war of aggression, or a war in violation of international treaties, agreements or assurances, or participating in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) war crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave

labor or for any other purpose of civilian population of or in occupied territory, murder of ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war: or persecutions on political, racial or religious grounds in executions of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 8.

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

APPENDIX M

Federal Rules of Evidence

Article III – Presumptions in Civil Actions and Proceedings

Rule 301 – Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

Article VI – Witnesses

Rule 603 – Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

Rule 607 – Who May Impeach

The credibility of a witness may be attacked by any party, including the party that called the witness.

Rule 614 – Calling and Interrogation of Witnesses by the Court

(a) *Calling by the court.* The court may, on its own motion or at the suggestion of the party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) *Interrogation by the court.* The court may interrogate witnesses, whether called by itself or by a party.

(c) *Objections.* Objections to the calling of witnesses by the court or to the interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Article VIII – Hearsay

Rule 801 – Definitions

The following definitions apply under this article.

(a) *Statement.* A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant.* A "declarant" is a person who makes a statement.

(c) *Hearsay.* "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Statements which are not hearsay.* A statement is not hearsay if –

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) *Admission by party-opponent.* The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Rule 802 – Hearsay Rule

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.

Rule 803 – Hearsay Exceptions: Availability of Declarant Material

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) *Present sense impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) *Excited utterance.* A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

* * *

(24) ***Other exceptions.*** A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. **However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the *name and address* of the declarant.**

Rule 804 – Hearsay Exceptions: Declarant Unavailable

(a) *Definition of unavailability.* "Unavailability as a witness" includes situations in which the declarant –

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so.

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivisions (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay exceptions.* The following are not excluded by the hearsay rule if the declarant is unavailable as a witness.

* * *

(5) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. **However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.**

Rule 805 – Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806 – Attacking and Supporting Credibility of Defendant

When a hearsay statement, or a statement defined in Rule 801 (d)(2),(C),(D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant

had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Article IX – Authentication And Identification

Rule 901 – Requirement of Authentication or Identification

(a) *General Provision.* The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.

(b) *Illustrations.* By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule.

(1) *Testimony of witness with knowledge.* Testimony that a matter is what it is claimed to be.

(2) *Nonexpert opinion on handwriting.* Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of litigation.

(3) *Comparison by trier or expert witness.* Comparison by the trier of fact or by expert witness with specimens which have been authenticated.

(4) *Distinctive characteristics and the like.* Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) *Voice identification.* Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) *Telephone conversations.* Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over telephone.

* * *

APPENDIX N

AMERICAN BAR ASSOCIATION'S MODEL RULES OF PROFESSIONAL CONDUCT

RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A LAWYER SHALL NOT:

(a) UNLAWFULLY OBSTRUCT ANOTHER PARTY'S ACCESS TO EVIDENCE OR UNLAWFULLY ALTER, DESTROY OR CONCEAL A DOCUMENT OR OTHER MATERIAL HAVING POTENTIAL EVIDENTIARY VALUE. A LAWYER SHALL NOT COUNSEL OR ASSIST ANOTHER PERSON TO DO ANY SUCH ACT;

(b) FALSIFY EVIDENCE, COUNSEL OR ASSIST A WITNESS TO TESTIFY FALSELY, OR OFFER AN INDUCEMENT TO A WITNESS THAT IS PROHIBITED BY LAW;

(c) KNOWINGLY DISOBEY AN OBLIGATION UNDER THE RULES OF A TRIBUNAL EXCEPT FOR AN OPEN REFUSAL BASED ON AN ASSERTION THAT NO VALID OBLIGATION EXISTS;

(d) IN PRETRIAL DISCOVERY, MAKE A FRIVOLOUS DISCOVERY REQUEST OR FAIL TO MAKE REASONABLY DILIGENT EFFORT TO COMPLY WITH A LEGALLY PROPER DISCOVERY REQUEST BY AN OPPOSING PARTY;

(e) IN TRIAL, ALLUDE TO ANY MATTER THAT THE LAWYER DOES NOT REASONABLY BELIEVE IS RELEVANT OR THAT WILL NOT BE SUPPORTED BY

ADMISSIBLE EVIDENCE, ASSERT PERSONAL KNOWLEDGE OF FACTS IN ISSUE EXCEPT WHEN TESTIFYING AS A WITNESS, OR STATE A PERSONAL OPINION AS TO THE JUSTNESS OF A CAUSE, THE CREDIBILITY OF A WITNESS, THE CULPABILITY OF A CIVIL LITIGANT OR THE GUILT OR INNOCENCE OF AN ACCUSED; OR

(f) REQUEST A PERSON OTHER THAN A CLIENT TO REFRAIN FROM VOLUNTARILY GIVING RELEVANT INFORMATION TO ANOTHER PARTY UNLESS:

(1) THE PERSON IS A RELATIVE OR AN EMPLOYEE OR OTHER AGENT OF A CLIENT; AND

(2) THE LAWYER REASONABLY BELIEVES THAT THE PERSON'S INTERESTS WILL NOT BE ADVERSELY AFFECTED BY REFRAINING FROM GIVING SUCH INFORMATION.

A COMMENTARY ON ABA RULE 3.4:

The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influence witnesses, obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant

material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information.

APPENDIX O

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF ORANGE

The People of the State of California,

vs.

Armstrong Cheri, Vera

Defendant.

No. 700391

ORDER FOR RELEASE OF PATIENT

TO THE MARSHAL OF THE COUNTY OF ORANGE:

This is to order the release from custody: Vera Armstrong Cheri From: Royale TRC

The above named patient, in the above entitled cause, is being released for the following reason: _____

Writ of habeas Corpus Granted

Dated 11-24-92

/s/ Jackman
Judge of the Superior Court

Department No. 15

APPENDIX P

DECLARATION OF NATALIE SCHRIER

I, Natalie Schrier declare as follows,

1. I am currently a resident of the city of Los Angeles, California.

2. I have personal knowledge of the facts stated herein and if called upon to testify could and would do so competently.

3. Prior to November, 1992, I knew Vera Armstrong Cherry for approximately six years. My husband, Dr. Ronald Schrier and I were friends with Vera Armstrong Cherry and her late husband, Dr. Herbert Cherry.

4. I am informed and believe that Vera Armstrong Cherry was hospitalized in a psychiatric facility on November 19, 1994.

5. During the six years prior to November, 1992, I saw Vera Armstrong Cherry intermittently on a friendly basis.

6. In November, 1992, before the hospitalization which I understand to be at issue in this case, I had several telephone contacts and at least two opportunities to observe the conduct of Vera Armstrong Cherry.

7. As a friend who had known Vera Armstrong Cherry for several years, my telephone contacts and personal observations in November, 1992 caused me great concern for her safety and her ability to exercise proper judgment.

8. The contacts and observations which caused me great concern are set forth below.

9. Within the two days before November 19, 1992, I met Vera for lunch at a restaurant called the Revere House, located in Tustin, California. Another friend, Dr. Barry Marfleet also met us on that date.

10. I arrived at the restaurant at approximately 2:00 p.m. When I entered the restaurant Vera was sitting at the bar with another friend who I believe to be Ed Roland.

11. Vera was wearing an outfit that was either a leotard or a body suit, and heels. She was also wearing a hat with Perot campaign buttons. As I approached the bar, Vera was singing.

12. As I was about to sit down, Vera came rushing over to me and said not to sit on the particular chair near me because there was a dog in the bag on the chair. I thought she was kidding and started to sit down.

13. The dog barked and Vera then took a small Chihuahua dog out of the bag.

14. A waitress told her that she would have to leave because dogs were not allowed in the restaurant. I believed the request of the waitress was reasonable. In response to the request, Vera began to pass her dog around the bar.

15. I recall suggesting that Vera put the dog in her car, but Vera refused to do this. The waitress again asked her to leave the bar and Vera refused.

16. The restaurant management then indicated that they were going to call the police regarding this matter. At that point it was about 2:30 p.m. and I left the restaurant because I did not want to be there when the police came.

17. The next contact I had with Vera was a telephone contact on the date that Vera was taken from her home for the psychiatric evaluation and/or hospitalization. We had at least two conversations via telephone before 10:00 a.m. on that date.

18. The first telephone conversation was at approximately 8:00 a.m. During this telephone conversation, Vera told me that she had been arrested the night before in Newport Beach. She stated that life was not worthwhile any more. She also indicated that everyone was against her because of her political beliefs.

19. After stating that life was not worthwhile living anymore, Vera Cherry asked me if my husband, Dr. Ronald Schrier, would give her some sleeping pills. I refused to make this request on her behalf and suggested that she see a psychiatrist.

20. When I indicated that I would not request sleeping pills on her behalf, Vera informed me that she had doctor friends who could provide her with sleeping pills.

21. Based upon the events of the previous day and the comments made by Vera during our telephone conversation, I was concerned that Vera wanted to harm herself and that she might be suicidal.

22. I responded that I would try to get her an appointment with a psychiatrist that I knew at the time, Dr. Borovinsky. He practiced in the Tustin area near Vera's home and Vera stated that she might be interested in going to see him.

23. After hanging up the telephone with Vera, I contacted Dr. Borovinsky's office. I was able to set up an

appointment for Vera at approximately 1:00 p.m. on that date.

24. At or before 9:30 a.m., I called Vera back to inform her that this appointment was available for her. At the time of this second telephone conversation, Vera told me that she would not go see Dr. Borovinsky.

25. At or before 9:30 a.m., I spoke with Kay Cantrell via telephone. I do not recall who initiated the telephone call, but I recall speaking with her prior to leaving for my class which was to start at 10:00 a.m. that morning. I have known Kay Cantrell as a friend for several years.

26. I informed Kay Cantrell about my conversations with Vera and of my concern about Vera's personal safety.

27. When I returned from my class, I telephoned Vera Cherry's home. Kay Cantrell answered the telephone and indicated that Vera Cherry had already been taken from her home for the psychiatric evaluation and/or hospitalization.

28. I drove to Tustin and met Kay Cantrell at Vera's home. After a brief conversation, regarding the events of that morning, both Kay Cantrell and I drove our cars to Western Medical Center to see Vera.

29. When I arrived at Western Medical Center it was between 2:30 and 3:00 p.m.

30. At Western Medical Center, I observed Vera to be dressed in an outfit similar to the one she had been wearing at the Revere House restaurant when we had lunch. A woman was trying to speak with Vera when I first saw her. I believed at the time that this woman was evaluating Vera. Vera was singing during this time.

31. I was at Western Medical Center for approximately 15 minutes and in the presence of Vera Cherry for that entire time period. Vera would not speak to me during that time and I did not have the opportunity to interrupt the interaction between the unidentified woman and Vera. During the entire time period I was at Western Medical Center, I was with Kay Cantrell.

32. At no time while I was at Western Medical Center did I observe Vera Cherry to be physically restrained in any way.

33. At no time while I was at Western Medical Center did I observe any injections being given to Vera Cherry.

34. At no time did I observe any staff member of Western Medical Center engaging in behavior that could be considered taunting of Vera Cherry.

35. At no time did I observe Kay Cantrell engaging in any behavior that a reasonable person would consider as anything other than genuine concern for the well being of our mutual friend, Vera Armstrong Cherry.

36. I left Western Medical Center between 3:00 p.m. and 3:30 p.m.

37. During the six years prior to November 1992, I had many opportunities to observe Vera Armstrong Cherry and to interact with her. The conduct, demeanor and manner of dress of Vera Cherry at the time of my contact with her in November, 1992 was markedly different from her general conduct, demeanor and manner of dress that I had observed before. All of these things combined with her verbal comments caused me great

concern for her safety on November 19, 1992. All of these things caused me great concern about the appropriateness of her judgment at that time.

38. Subsequent to my departure from Western Medical Center I had another telephone conversation with Kay Cantrell. She informed me where Vera had been taken to another facility and I attempted to contact Vera via telephone that evening. I was unable to get through to Vera and did not speak with her again until approximately 2 weeks after her hospitalization.

39. My next contact with Vera Cherry was a telephone call wherein she informed me that she would sue me along with everyone else because of what had happened to her. She sounded angry and was yelling throughout this conversation. I have not any contact with Vera Armstrong Cherry since that date.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of July, 1994 at _____, California.

_____

Natalie Schrier
Declarant

** Please note that the Original, Signed Declaration of Natalie Schrier is being filed with Defendant, Royale Treatment Center's Motion for Summary Judgment.

APPENDIX Q

HOLLINS, SCECHTER & FEINSTEIN
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Attorneys for Defendant, KAY CANTRELL

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VERA ARMSTRONG CHERRY Plaintiff, v. COUNTY OF ORANGE, ROYAL TRC dba ROYAL HEALTH CARE CENTER, UNITED WESTERN MEDICAL CENTERS, KAY CANTRELL, CAROLE LIPINSKI, CHERI BLANCHARD, FIORE, NORDBERG, WALKER & WOOLF-WILLIS, and DOES 1 through 10, Inclusive, Defendants.	CASE NO. SACV93-976.LHM (EEx) JUDGE: LINDA H. McLAUGHLIN NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KAY CANTRELL; DECLARATION OF KENNETH C. JONES IN SUPPORT THEREOF DATE: August 29, 1994 TIME: 1:30 p.m. CTRM: "3"

TO PLAINTIFF, VERA ARMSTRONG CHERRY AND TO HER ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on August 29, 1994, at 1:30 p.m., or as soon as the matter may be heard in Courtroom "3" of the above entitled court located at 751 West Santa Ana Boulevard, Santa Ana, California, Defendant, KAY CANTRELL, will and hereby does move this court for summary judgment on the grounds that there is no genuine issue as to any material fact and that moving party is entitled to judgment in her favor as a matter of law, in that plaintiff's claims have no merit and there is no genuine issue of material fact with respect thereto.

This motion is made and based on this notice, the accompanying Memorandum of Points and Authorities, the accompanying Declarations of KAY CANTRELL and Kenneth C. Jones and supporting evidence, the accompanying Statement of Uncontroverted Facts and Conclusions of Law, the papers, pleadings and documents on file herein, and such other and further oral and documentary evidence that may be introduced at the time of the hearing on this motion.

DATED: July 29, 1994 HOLLINS, SCHECHTER & FEINSTEIN

By: /s/ Kenneth C. Jones
KENNETH C. JONES
Attorneys for Defendant,
KAY CANTRELL

DECLARATION OF KENNETH C. JONES

I, Kenneth C. Jones declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and before the United States District Court for the Central District of California. I am a partner in the law offices of Hollins, Schechter & Feinstein counsel of record herein for Defendant, KAY CANTRELL. The within facts are based upon my personal knowledge and, if called upon and sworn, I could and would so testify to them truthfully.

2. On June 6, 1994, the deposition of Defendant, KAY CANTRELL was taken in this action. Attached hereto as Exhibit "A" are true and correct copies of relevant portions of the deposition transcript.

3. On June 7, 1994, the deposition of Mark Hopkins, an attorney with defendant, FIORE, NORDBERG, WALKER & WOOLF-WILLIS was taken in this action. Attached hereto as Exhibit "B" are true and correct copies of relevant portions of the deposition transcript.

4. On May 26, 1994, the deposition of Defendant, CAROLE LIPINSKI was taken in this action. Attached hereto as Exhibit "C" are true and correct copies of relevant portions of the deposition transcript.

5. Attached hereto as Exhibit "D" is a true and correct copy of the Declaration of Natalie Schrier, a material witness with personal knowledge of the facts and events of November 19, 1992. I am informed and believe the original signed declaration is being submitted with

Defendant, ROYALE TRC's Motion for Summary Judgment.

Lastly, and perhaps most importantly, there is no evidence that defendant CANTRELL was acting anything other than an honest and reasonable good faith belief in the propriety and constitutionality of her contacting Orange County Psychiatric Assessment Team. Defendant CANTRELL should, therefore, be afforded qualified immunity from suit based upon her good faith conduct.

Based upon the foregoing, and the accompanying Statement of Uncontroverted Facts and Conclusions of Law, and the supporting proffered evidence, defendant CANTRELL respectfully asserts that this Court should grant her motion and issue summary judgment in her favor and as against Plaintiff, VERA ARMSTRONG CHERRY, and for such other relief that this Court deems just and proper.

DATED: July 29, 1994 HOLLINS, SCHECHTER & FEINSTEIN

By: /s/ Kenneth C. Jones
KENNETH C. JONES
Attorneys for Defendant,
KAY CANTRELL

6. Attached hereto as Exhibit "E" is a true and correct copy of Defendant, KAY CANTRELL'S, first set of Request for Admissions propounded to Defendant, COUNTY OF ORANGE. This Request for Admissions was served on June 20, 1994.

7. Attached hereto as Exhibit "F" is a true and correct copy of the COUNTY OF ORANGE's responses to

the Request for Admissions propounded by Defendant, KAY CANTRELL. These responses were served on July 28, 1994.

8. Attached hereto as Exhibit "G" is a true and correct copy of the Application for 72 Hour Detention Evaluation and Treatment. COUNTY OF ORANGE admitted the genuiness of this document in its Response to Request for Admissions, identified above as Exhibit "F".

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 29, 1994 /s/ Kenneth C. Jones
KENNETH C. JONES,
Declarant